

**MUTUAL LEGAL ASSISTANCE (EUROPEAN UNION)  
ACT 2005**

**Principal Act**

**Act. No. 2004-03**

*Commencement* 28.1.2004

*Assent* 28.1.2004

Amending enactments	Relevant current provisions	Commencement date
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Act. 2005-31 s.2		23.5.2005
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2005-70	Long title, ss. 1, 2, 3(1) & (2), 12(5), 14, 19(1), 22, 23, 24-40 & Sch.2	29.12.2005
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**Transposing:**

Directive 76/308/EEC

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AN ACT TO IMPLEMENT ARTICLE 48 TO 53 OF THE CONVENTION OF 19 JUNE 1990 APPLYING THE SCHENGEN AGREEMENT OF 14 JUNE 1985 RELATING TO MUTUAL LEGAL ASSISTANCE; TO MAKE FURTHER PROVISION FOR MUTUAL LEGAL ASSISTANCE BETWEEN GIBRALTAR AND OTHER JURISDICTIONS; TO ENABLE FURTHER PROVISION TO BE MADE BY REGULATION, MAKING ARRANGEMENTS FOR MUTUAL LEGAL ASSISTANCE IN FAVOUR OF THE UNITED KINGDOM AND OTHER MEMBER STATES; AND OTHER PROVISIONS IN THAT RESPECT.

**PART I**  
PRELIMINARY

**Title.**

1. This Act may be cited as the Mutual Legal Assistance (European Union) Act 2005.

**PART II**  
MUTUAL LEGAL ASSISTANCE IN RESPECT OF  
COURT OR OTHER PROCEEDINGS

**Interpretation.**

2. In this Part and unless the context otherwise requires –

“Central Authority” means the Attorney General;

“civil proceedings” does not include proceedings relating to fiscal matters;

“court” includes a tribunal;

“criminal proceedings” means proceedings relating to an offence and include criminal proceedings outside Gibraltar in which a civil order may be made;

“evidence” includes information in any form, and articles, and giving evidence includes answering a question or producing any information or article;

“Minister” means the Chief Minister;

“notice” means a notice in writing;

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“offence” does not include a fiscal offence, other than an offence relating to excise duty, value added tax or customs duties;

“process” means any summons or order issued or made by a court and includes–

- (a) any other document issued or made by a court for service on parties or witnesses;
- (b) any document issued by a prosecuting authority outside Gibraltar for the purposes of criminal proceedings;

“the Schengen Convention” means the Convention implementing the Schengen Agreement of 14th June 1985;

“State” and “Schengen State” means a State party to the Schengen Convention not being the United Kingdom;

“territory” means the territory of a Schengen State to which articles 48 to 53 of the Schengen Convention apply.

## Scope.

3.(1) Unless otherwise stated, this Part shall apply in relation to–

- (a) criminal proceedings and investigations, in respect of any criminal proceedings excluding proceedings under military law;
- (b) criminal proceedings brought by the administrative authorities in a Schengen State or territory, including Gibraltar, in respect of offences which are punishable either in Gibraltar or that State;
- (c) proceedings for compensation in respect of wrongful prosecution or conviction;
- (d) clemency proceedings;
- (e) communication of legal statements relating to the execution of a sentence or measure, the imposition of a fine or the payment of costs or proceedings;
- (f) measures relating to the suspension or delivery of a sentence or measure, conditional release or the postponement or suspension of execution of a sentence or measure;

- (g) civil proceedings joined to criminal proceedings, as long as the criminal court has not yet given a final ruling in the criminal proceedings.

(2) Assistance under this Part may be refused—

- (a) if the request for assistance concerns a political offence or an offence connected with a political offence;
- (b) if execution of the request is likely to prejudice the sovereignty, security, public order or other essential interests of Gibraltar;

(3) Requests for assistance under section 18, 19 or 21 shall be effected through the Ministry of Justice of the requesting State or territory.

**Judicial Authority.**

4. The Central Authority is a judicial authority for purposes connected with article 53 of the Schengen Convention.

**Service of Schengen process in Gibraltar.**

5.(1) An authority in a Schengen State may directly serve persons in Gibraltar by post with the following documents—

- (a) documents initiating or relating to court proceedings, including, but not limited to, summons, notices of hearings and adjournments;
- (b) witness summons;
- (c) judicial orders and judgments;
- (d) judicial documents relating to the enforcement of any judicial order or judgment.

(2) Where the process is to be served inside Gibraltar and is written in a language that the recipient may not understand, it shall be accompanied by a translation of the process into English.

(3) The power conferred by subsection (4) is exercisable where the Central Authority receives any process or other document to which this section applies from an authority in a Schengen State, together with a request for the process or document to be served on a person in Gibraltar.

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(4) The Central Authority may cause the process or document to be served by post or, if the request is for personal service, direct the Commissioner of Police to cause it to be personally served on the person to whom the process or document is addressed.

(5) In respect of proceedings under section 3(1)(b), where an offence is punishable both under the law of Gibraltar and the law of the other Schengen State, the procedure for service of documents set out in subsection (4) shall be used.

**Service of Schengen process: supplementary.**

6.(1) No obligation to comply with the process is imposed by virtue of its service.

(2) The process shall be accompanied by a notice—

- (a) stating the effect of subsection (1);
- (b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of his failing to comply with the process under the law of the State where it was issued or made; and
- (c) indicating that under that law he may not be accorded the same rights and privileges as a party or as a witness as would be accorded to him in proceedings in Gibraltar.

(3) Where the Commissioner of Police causes any process or document to be served under section 5, he shall—

- (a) inform the Central Authority when and how it was served; and
- (b) (if possible) provide him with a receipt signed by the person on whom it was served.

(4) Where the Commissioner of Police is unable to cause any process or document to be served as directed, he shall at once inform the Central Authority of that fact and of the reason.

**General requirements for service of Gibraltar process in a Schengen State.**

7.(1) This section applies to any process issued or made by a court in Gibraltar for the purposes set out in section 3.

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(2) The process may be issued or made in spite of the fact that the person on whom it is to be served is outside Gibraltar.

(3) Where the process is to be served outside Gibraltar and the person at whose request it is issued or made believes that the person on whom it is to be served does not understand English, he shall—

- (a) inform the court of that fact; and
- (b) provide the court with a copy of the process, or of so much of it as is material, translated into an appropriate language.

(4) Process served outside Gibraltar requiring a person to appear as a party or attend as a witness—

- (a) shall not include notice of a penalty; and
- (b) shall be accompanied by a notice giving any information required to be given by rules of court.

(5) If process requiring a person to appear as a party or attend as a witness is served outside Gibraltar, no obligation to comply with the process under the law of Gibraltar is imposed by virtue of the service.

(6) Accordingly, failure to comply with the process does not constitute contempt of court and is not a ground for issuing a warrant to secure the attendance of the person in question.

(7) But the process may subsequently be served on the person in question in Gibraltar (with the usual consequences for non-compliance).

(8) The allowances, including subsistence, to be paid and the travelling expenses to be refunded to a witness or expert by the requesting State shall be calculated as from his place of residence and shall be at rates at least equal to those provided for in the scales and rules in force in proceedings before the Supreme Court.

**Service of process otherwise than by post.**

8. Process to which section 7 applies may, instead of being served by post, be served on a person outside Gibraltar in accordance with arrangements made by the Central Authority.

**Requests for assistance in obtaining evidence in a Schengen State.**

9.(1) If it appears to any judge or justice of the peace in Gibraltar—



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- (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed; and
- (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated; or
- (c) that section 3 otherwise applies,

the judge or justice of the peace may request assistance under this section.

(2) The assistance that may be requested under this section is assistance in obtaining outside Gibraltar any evidence specified in the request for use in the proceedings or investigation.

(3) The Central Authority may request assistance under this section if—

- (a) it appears to it that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed; and
- (b) proceedings in respect of the offence in question have been instituted or it is being investigated; or
- (c) section 3 otherwise applies.

**Sending requests for assistance.**

10.(1) A request for assistance under section 9 may be sent—

- (a) to a court exercising jurisdiction in the place where the evidence is situated; or
- (b) to any authority recognised by the government of the State or territory in question as the appropriate authority for receiving requests of that kind.

(2) In cases of urgency, a request for assistance may be sent to the International Criminal Police Organisation, for forwarding to any court or authority mentioned in subsection (1).

**Use of evidence obtained.**

11.(1) This section applies to evidence obtained pursuant to a request for assistance under section 9.

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(2) The evidence may not, without the consent of the appropriate overseas authority, be used for any purpose other than that specified in the request.

(3) When the evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to the appropriate overseas authority, unless that authority indicates that it need not be returned.

(4) In this section, the appropriate overseas authority means the authority recognised by the government of the State in question as the appropriate authority for receiving requests of the kind in question.

**Requests for assistance from overseas authorities.**

12.(1) Where a request for assistance in obtaining evidence in Gibraltar is received by the Central Authority it may—

- (a) if the conditions in section 13 are met, arrange for the evidence to be obtained under section 14; or
- (b) direct that a search warrant be applied for under or by virtue of section 15.

(2) The request for assistance may be made only by—

- (a) a court exercising criminal jurisdiction, or a prosecuting authority, in a State or territory outside Gibraltar;
- (b) any other authority in such a State or territory which appears to the Central Authority to have the function of making such requests for assistance.

(3) Requests for assistance should be made in English or accompanied by a certified translation into English and any supporting documentation, if not in English, shall be accompanied by a certified translation into English.

(4) Requests for assistance shall indicate as follows—

- (a) the authority making the request;
- (b) the object of and the reason for the request;
- (c) where possible, the identity and the nationality of the person concerned;

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- (d) where necessary, the name and address of the person to be served; and
- (e) the offence or alleged offence and a summary of the facts.

(5) Requests under this Part may be sent and returned through the national central offices of the International Criminal Police Organisation.

**Powers to arrange for evidence to be obtained.**

13. The Central Authority may arrange for evidence to be obtained under section 14 if the request for assistance in obtaining the evidence is made in connection with proceedings or investigations covered by section 3 being carried on in a State or territory outside Gibraltar.

**Court to receive evidence.**

14.(1) A court in Gibraltar shall receive any evidence to which the request relates which appears to it to be appropriate for the purpose of giving effect to the request.

(2) The Schedule 1 is to have effect in relation to proceedings under this section.

**Statutory search powers.**

15.(1) Sections 25, 26 and 27 of the Criminal Procedure Act shall have effect as if references to an offence in section 25(1) included any conduct which—

- (a) constitutes an offence under the law of a State or territory outside Gibraltar; and
- (b) would, if it occurred in Gibraltar, constitute an offence punishable by imprisonment for a period of at least six months.

(2) An application for a warrant or order by virtue of subsection (1) may be made only in pursuance of a direction given under section 12(1)(b).

**Seized evidence.**

16. Any evidence seized by a police officer under or by virtue of section 15 is to be sent to the court or authority which made the request for assistance.

**Powers under warrants.**

17. A court may not issue a warrant under section 15 in respect of any evidence if the court has reasonable grounds for believing that it consists of, or includes, items subject to legal privilege.

**Temporary transfer of prisoners.**

18.(1) The Central Authority shall petition the court for an order that a person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting State be temporarily transferred to the territory where the hearing is intended to take place, provided that -

- (a) he shall be sent back within the period stipulated by the requested State;
- (b) the person in custody consents;
- (c) his presence is not necessary at criminal proceedings pending in Gibraltar;
- (d) the transfer is not liable to prolong his detention; and
- (e) there are no other overriding grounds for not transferring him to the territory of the requesting State.

(2) In a case within section 13 or subsection (1) of this section, the Central Authority may arrange for the assistance to be given only if it is satisfied—

- (a) that an offence under the law of the State or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed, and that proceedings in respect of the offence have been instituted in that State or territory or that an investigation into the offence is being carried on there; or
- (b) that section 3 otherwise applies.

(3) For the purposes of this section and section 13, an offence includes an act punishable in proceedings brought by the administrative authorities in a Schengen State in respect of offences which are punishable either in Gibraltar or that State where the decision may give rise to proceedings before a criminal court.

(4) The Central Authority is to regard as conclusive a certificate as to the matters mentioned in subsection (2)(a) and (b) issued by any authority in the

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State or territory in question which appears to him to be the appropriate authority to do so.

(5) Evidence or documents transmitted pursuant to this Act shall not require any form of authentication.

(6) Where the Central Authority or the court refuses any request for assistance, reasons shall be provided.

## **Transit through Gibraltar.**

19.(1) Transit through Gibraltar of a person being conveyed from an requested State to a requesting State, pursuant to a request for assistance falling within the scope of this Part shall be permitted where the Central Authority receives a request in that behalf from the requesting State and where the requesting State provides the Central Authority with the following information—

- (a) the nationality of the person and such other information as will enable the person to be identified by the Central Authority;
- (b) information showing that a request for assistance has been issued by the requesting State in respect of the person;
- (c) the nature and classification under the law of the issuing State of the offence to which the request relates; and
- (d) the circumstances in which the offence specified was committed or is alleged to have been committed, including the date and place of its commission.

(2) The transit of a person through Gibraltar shall be supervised by a police officer if the Central Authority considers it appropriate, and where a person's transit is so supervised the person shall be deemed to be in the custody of a police officer who accompanies him.

(3)

- (a) This subsection applies to an aircraft that has taken off from a place (other than Gibraltar Airport) and that is scheduled to land in a place (other than Gibraltar Airport) and on board which there is a person who is being conveyed to a requesting State.
- (b) Where an aircraft to which this subsection applies lands (for whatever reason) in Gibraltar, the requesting State shall, upon

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its landing or as soon as may be after it lands, provide the Central Authority with the information referred to in subsection (1).

- (c) While an aircraft to which this subsection applies is in Gibraltar, a person referred to in paragraph (a) who is on board that aircraft shall be deemed to be in transit through Gibraltar and subsection (2) shall apply accordingly.

#### **Immunity of witnesses.**

20.(1) A witness or expert, whatever his nationality, may make his appearance before the judicial authorities of the requesting State conditional on a prior assurance being given to him that he will not be prosecuted, detained or subjected to any other restriction of his personal liberty in the territory of that State in respect of acts or convictions prior to his departure from Gibraltar.

(2) An accused person, whatever his nationality, may make his appearance before the judicial authorities of the requesting State conditional on a prior assurance being given to him that he will not be prosecuted, detained or subjected to any other restriction of his personal liberty in the territory of that State in respect of acts or convictions prior to his departure from Gibraltar and not specified in the summons.

(3) This section shall not apply when the witness or expert or accused person having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

#### **Transfer of judicial records.**

21.(1) The Registrar of the Supreme Court shall communicate extracts from and information relating to judicial records, requested by the judicial authorities of a Schengen State and needed in a criminal matter, to the same extent that these may be made available to a court in Gibraltar in a like case.

(2) In any case other than that provided for in subsection (1), the request shall be complied with subject to such conditions as the Chief Justice may deem appropriate.

(3) The Registrar of the Supreme Court shall inform any other Schengen States of all criminal convictions and subsequent measures in respect of nationals of those States, entered in the judicial records at least once a year. Where the person concerned is considered a national of two or more other

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Schengen States, the information shall be given to each of these States, unless the person is a British national.

**Rules of court.**

22. The Chief Justice may make provision by rules of court as to the practice and procedure to be followed in connection with proceedings under this Part.

23. The Minister may, by regulations, make provision extending to the United Kingdom in whole or in part the provisions of this Act either with or without modifications.

**PART III  
MUTUAL LEGAL ASSISTANCE IN MATTERS NOT FALLING  
WITHIN THE SCOPE OF PART II**

**Interpretation.**

24. In this Part and unless the context otherwise requires—

“applicant authority” means the authority of a Member State making a request for assistance to the competent authority in respect of a claim referred to in section 25 and which is authorised to make such a request pursuant to article 19 of the directive;

“court” means the Supreme Court;

“competent authority” means such person as the Minister may, from time to time, designate by notice in the Gazette (being such person as is authorised to make or receive a request for assistance in respect of a claim referred to in section 25 and who is authorised to make or receive such a request pursuant to article 19 of the directive);

“directive” means Council Directive 76/308/EEC as amended;

“export duties” means customs duties and charges having equivalent effect on exports, and export charges laid down within the framework of the common agricultural policy or in that of specific arrangements applicable to certain goods resulting from the processing of agricultural products;

“import duties” means customs duties and charges having equivalent effect on imports, and import charges laid down within the framework of the common agricultural policy or in that of specific

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arrangements applicable to certain goods resulting from the processing of agricultural products;

“Member State” means such State as the Minister may provide by regulations made pursuant to this Part ;

“Minister” means the Minister with responsibility for public finance;

“requested authority” means the authority of a Member State receiving a request for assistance from the competent authority in respect of a claim referred to in section 25 and which is authorised to receive such a request pursuant to article 19 of the directive;

“taxes on income and capital” and “taxes on insurance premiums” means such taxes as the Minister may provide by notice in the Gazette.

### **Application.**

25.(1) This Part makes provision—

- (a) for the recovery in a Member State of claims referred to in subsection (2) arising in Gibraltar;
- (b) for the recovery in Gibraltar of claims referred to in subsection (2) arising in a Member State.

(2) Subject to subsection (3), this Part applies to claims relating to the levies, duties, taxes and other measures listed in Schedule 2.

(3) This Part shall not apply in relation to any administrative penalties or fines deemed by the competent authority to be of a criminal nature.

### **Supply of information.**

26.(1)

- (a) An applicant authority may request the competent authority to provide any information which would be useful to the applicant authority; and
- (b) the competent authority may request a requested authority to provide any information which would be useful to the competent authority,

in the recovery of a claim to which, as the case may be, this Part applies.



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(2) In order to obtain information requested under subsection (1)(a), the competent authority shall make use of powers provided under Gibraltar law for the recovery of similar claims arising in Gibraltar.

(3)

- (a) A request for information referred to in subsection (1)(b) shall indicate; and
- (b) the competent authority shall not offer assistance under subsection (1)(a) unless the following information is supplied—
  - (i) the name and address of the person in relation to whom the information is being requested ;
  - (ii) the nature and amount of the claim in respect of which the request is being made; and
  - (iii) any other information which is relevant to the identification of the person in relation to whom the information is being requested and to which the authority requesting the information normally has access.

(4) The competent authority shall not be obliged to supply information—

- (a) where the request made by the applicant authority does not contain the information set out in sub-section (3)(b) ;
- (b) which it would not be able to obtain for the purpose of recovering similar claims arising under Gibraltar law;
- (c) which would disclose any commercial, industrial or professional secrets; or
- (d) the disclosure of which would be liable to prejudice the security of Gibraltar or be contrary to the public policy of the Government of Gibraltar.

(5) Where the competent authority refuses a request for information, it shall inform the applicant authority of the grounds for refusal.

## **Service of official documents.**

27.(1) The competent authority—

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- (a) shall at the request of the applicant authority, and in accordance with the law in force for the service of similar instruments or decisions in Gibraltar, serve on the addressee all instruments and decisions, including those of a judicial nature, transmitted to it by the applicant authority;
- (b) may request a requested authority to serve on the addressee, all instruments and decisions, including those of a judicial nature, which it has transmitted to the requested authority

and which relate to a claim or to its recovery.

(2)

- (a) A request for the service of documents referred to in subsection (1)(b) shall indicate; and
- (b) the competent authority shall not offer assistance under pursuant to subsection (1)(a) unless the following information is supplied—
  - (i) the name and address of the addressee concerned ;
  - (ii) any other information which is relevant to the identification of the addressee concerned and to which the authority making the request normally has access;
  - (iii) the nature and the subject of the instrument or decision to be served;
  - (iv) if necessary—
    - (a) the name and address of the debtor; and
    - (b) any other information which is relevant to the identification of the debtor and to which the authority making the request normally has access;
  - (v) the claim to which the instrument or decision relates; and
  - (vi) any other useful information.

(3) The competent authority shall promptly inform the applicant authority of the action taken on its request under subsection (1)(a) and the date on which the instrument or decision was forwarded to the addressee.

**Enforcement of claims.**

28.(1) At the request of the applicant authority, the competent authority shall—

- (a) acting in accordance with the laws, regulations and administrative provisions applying to the recovery of similar claims arising in Gibraltar; and
- (b) upon being satisfied that the recovery of the claim has been authorised by the applicant authority,

assist with the recovery of claims which are the subject of an instrument permitting their enforcement.

(2) Subject to the provisions of this Part, any claim in respect of which a request for recovery has been made to the competent authority shall, for the purpose of its enforcement, be deemed by the court to be a debt owed under Gibraltar law.

(3) Notwithstanding subsection (2), the Minister may make regulations to provide for claims to be recovered by the competent authority under this Part not to benefit from such privileges as may be accorded to debts owed under Gibraltar law.

**Requirements for a request for the recovery of a claim.**

29.(1) This section applies to a request for the recovery of a claim made by—

- (a) an applicant authority to the competent authority under section 28 ; or
- (b) the competent authority to a requested authority under article 7 of the directive.

(2)

- (a) A request for recovery referred to in subsection (1)(b) shall include; and
- (b) the competent authority shall not offer assistance under pursuant to subsection (1)(a) unless the following documents are supplied—

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- (i) an official or certified copy of the instrument permitting the enforcement of the claim, issued by the competent body in the jurisdiction where the authority making the request is situated ; and
  - (ii) the original or a certified copy of any other documents deemed necessary for recovery.
  
- (3) The competent authority may refuse a request for the recovery of a claim under section 28 where it has reason to believe that—
  - (a) the claim or the instrument permitting its enforcement are contested in the Member State in which the applicant authority is situated; or
  - (b) the applicant authority has, in the Member State in which it is situated, applied appropriate recovery procedures available to it on the basis of the instrument referred to in subsection (2)(a)(i), and the measures taken have resulted in the payment in full of the claim.
  
- (4) Subsection (3)(a) shall be applied subject to section 32 (7) and (8).
  
- (5)
  - (a) A claim referred to in subsection (1)(b) shall indicate; and
  - (b) the competent authority shall not offer assistance under subsection (1)(a) unless the following information is supplied -
    - (i) the name, address and any other relevant information relating to the identification of the person concerned or to any third party holding assets on behalf of that person;
    - (ii) the name, address and any other relevant information relating to the identification of the authority making the request;
    - (iii) a reference to the instrument permitting the enforcement of the claim issued in the jurisdiction in which the authority making the request is situated;
    - (iv) the nature and the amount of the claim, including the principal, the interest, and any other penalties, fines and costs due indicated in Sterling and in the currency of the

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Member State in which the applicant or the requested authority, as the case may be, is situated ;

- (v) the date of notification of the instrument referred to in paragraph (c) above to the addressee;
- (vi) the date from which and the period during which enforcement is possible under the laws in force in the jurisdiction in which the authority making the request is situated; and
- (vii) any other relevant information.

(6) The request for recovery shall also contain a declaration—

- (a) by the applicant authority in a case falling within subsection (1)(a); and
- (b) by the competent authority in a case falling within subsection (1)(b) -

confirming that—

- (i) the claim or the instrument permitting its enforcement are not contested in its own jurisdiction ; and
- (ii) in a case falling within subsection (1)(a), it has applied appropriate recovery procedures available to it on the basis of the instrument referred to in subsection (2)(a)(i) within its own jurisdiction, and the measures taken will not result in the payment in full of the claim.

(6) Where the competent authority has made a request pursuant to subsection (1)(b) the competent authority shall, if so requested by the requested authority, undertake that any further information relating to the matter which gave rise to the request for recovery which comes to its knowledge shall be forwarded to the requested authority forthwith.

(7) In acknowledging receipt of a request under subsection (1)(a), the competent authority shall seek an undertaking from the applicant authority that any further information relating to the matter which gave rise to the request for recovery which comes to its knowledge shall be forwarded to the competent authority forthwith.

**Recognition of instruments permitting enforcement of a claim.**

30.(1) Where an applicant authority submits to the competent authority an instrument to which section 29(1)(a) refers, that instrument shall not be enforced in Gibraltar unless an order of the Court to the effect is first obtained.

(2) Where—

- (a) an instrument to which section 29(1)(a) refers has been received by the competent authority; and
- (b) an order of court under subsection (1) has not been obtained within three months of the receipt referred to in paragraph (a),

the competent authority shall inform the applicant authority of the grounds for the delay.

(3) The court shall not refuse an order for the enforcement of an instrument to which section 29(1)(a) refers where the instrument has been properly drawn up in accordance with the laws of the Member State in which the applicant authority is situated.

(4) Section 32(2) to (8) shall apply where the making of an order under subsection (1) is contested for any reason.

**Payment of recovered claims.**

31.(1) An order under section 30 (1) shall provide for the remittance by the competent authority to the applicant authority of the funds recovered, and any interest charged under subsection (3), in Sterling.

(2) Where the applicant authority does not object, an order under section 30(1) may provide for the debtor to settle the debt by instalments.

(3) An order under section 30(1) shall make provision for interest to be charged where the debtor pays late or not at all.

**Recovery: supplementary.**

32.(1) The competent authority shall keep the applicant authority informed of the steps being taken to give effect to the request for recovery, including any interlocutory proceedings or proceedings for injunctive relief which have been commenced.

(2) Where, before the enforcement of an order under section 30(1), an interested party contests the claim or the instrument referred to in section

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29(1)(a) before the competent body of the Member State in which the applicant authority is situated–

- (a) the interested party shall notify the competent authority of the existence of the action referred to in subsection (2) as soon as practicable after such an action is commenced;
- (b) subject to subsections (3) and (4), immediately upon receiving the notification referred to in paragraph (a) from either the applicant authority or the interested party as the case may be, the competent authority shall take no steps to enforce an order under section 29(1)(a) pending the delivery of a decision by the body competent in the matter.

(3) Notwithstanding subsection (2)(b) and without prejudice to any interlocutory proceedings or proceedings for injunctive relief which it may commence pursuant to subsection (1), where the competent authority deems it necessary it shall take precautionary measures to guarantee recovery.

(4) The competent authority shall take the precautionary measures referred to in subsection (3) only where the laws of Gibraltar would allow such measures to be taken in relation to a similar claim for recovery arising within Gibraltar.

(5) Notwithstanding subsection (2)(b), the applicant authority may request the competent authority to recover a claim where the relevant laws, regulations and administrative practices in force in its Member State allow such a recovery to take place notwithstanding the fact that such a claim or the instrument referred to in section 29(1)(a) are being contested before a competent body.

(6) Where the competent authority acts pursuant to a request made to it by an applicant authority under subsection (5) and the competent body referred to in that subsection subsequently renders a ruling in favour of the debtor, the applicant authority shall be liable for the reimbursement of any sums recovered by the competent authority, together with any compensation that may be due, in accordance with the laws of Gibraltar.

(7) Where an interested party contests the making of an order under section 30(1) or is appealing against such an order having been made, the action shall be brought before the court or Court of Appeal as the case may be.

(8) Where subsection (2) applies and for all purposes connected with this Part, where the competent body in a Member State is a judicial or administrative tribunal which has heard the action, the decision of that

tribunal, in so far as it is favourable to the applicant authority and permits recovery of the claim in the Member State where the applicant authority is situated, shall be treated by the competent authority as an instrument to which section 29(1)(a) refers.

**Conditions for non-assistance.**

33.(1) The competent authority shall not be obliged to grant the assistance provided for—

- (a) in sections 28 to 32 if—
  - (i) the laws, regulations and administrative practices in force in Gibraltar do not allow it to take such action in relation to similar claims arising within Gibraltar ;
  - (ii) recovery of the claim would, because of the situation of the debtor, create serious economic or social difficulties in Gibraltar; or
- (b) in sections 4 to 32 if the initial request under section 26, 27 or 28 applies to claims more than five years old—
  - (i) dating from the moment the instrument permitting the recovery was issued; or
  - (ii) where the claim or instrument are contested before a competent body of the Member State in which the applicant authority is situated, dating from the moment that such a body establishes that the claim or the enforcement order permitting recovery may no longer be contested; and until
  - (iii) the date of the request.

(2) Where subsection (1) applies, the competent authority shall ensure that the applicant authority and the European Commission are informed of the reasons why it has refused a request for assistance.

**Limitation periods.**

34.(1) The Limitation Act shall not apply in relation to any act or omission by the competent authority relating to any request for assistance it receives under this Part.



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(2) An act or omission carried out by the competent authority under the provisions of this Part pursuant to a request for assistance from an applicant authority shall have the effect of suspending or interrupting the period of limitation applicable where, had it been carried out by the applicant authority in the Member State in which the applicant authority concerned is situated, it would have had such an effect.

## **Duty of confidentiality.**

35. Documents and information sent to the competent authority pursuant to this Part shall remain confidential and may only be communicated by the competent authority to—

- (a) the debtor;
- (b) those persons and authorities responsible for the recovery of the claims, and solely for that purpose; and
- (c) officers of the court hearing the application for an order under section 30(1) or proceedings under section 32(9).

## **Requests for assistance to be in English.**

36. The competent authority shall not offer assistance under this Part unless—

- (a) the request for assistance;
  - (b) the instrument to which section 29(1)(a) refers;
- and
- (c) all the other relevant documents submitted by the applicant authority,

if not in the English language, are accompanied by an English translation certified correct by the applicant authority.

## **Recovery of cost of assistance.**

37.(1) An application to the court for an order under section 30(1) shall include an application for the recovery from the debtor of the competent authority's expenses and costs relating to the recovery, and where the amount recovered does not cover the expenses and costs owed to the applicant authority and competent authority, the court shall apportion the sum recovered equitably.

(2) Subject to subsection (3) and (4), the competent authority shall have no claim against an applicant authority for the refund of costs resulting from any assistance granted under this Part.

(3) Notwithstanding subsection (2), where assistance granted under this Part—

- (a) poses a specific problem;
- (b) concerns a very large amount in costs; or
- (c) relates to the fight against organised crime,

such assistance shall not be granted unless the applicant authority and the competent authority agree reimbursement arrangements specific to the case in question.

(4) Notwithstanding subsection (2), the Member State in which the applicant authority is situated shall be liable to the Gibraltar Government for any costs incurred where the substance of the claim or the validity of the instrument issued by the applicant authority are held to be unfounded.

#### **Rules of court.**

38. The Chief Justice may make rules of court in relation to any matter arising under this Part.

#### **Regulations.**

39.(1) The Minister may make regulations making provision for anything that may be provided for under this Part and generally to give effect to the provisions of this Part.

(2) Without prejudice to the generality of the foregoing, regulations made under subsection (1) may provide for the transposition into Gibraltar law, of Commission Directive 2002/94/EC of 9 December 2002 laying down detailed rules for implementing certain provisions of Council Directive 76/308/EEC on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures, as amended from time to time.

(3) Regulations made under subsection (1) may give effect to any agreement or arrangement that may be entered into by the Government of Gibraltar with any other country in relation to any matter falling within the scope of this Part.

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(4) Regulations made under subsection (1) may provide for the levying of such fees and the creation of such offences as the Minister deems appropriate.

## **Notification to the European Commission.**

40.(1) The Government shall ensure the European Commission is informed of the adoption of this Part.

(2) The Government shall ensure the European Commission is notified in writing every year of the following information in respect to the year covered by the notification—

- (a) the number of requests for information, notification and recovery which it has sent ;
- (b) the number of requests for information, notification and recovery which it has received ;
- (c) the amount of the claims involved ; and
- (d) the amounts recovered.

(3) The notification referred to in subsection (2) shall be made in accordance with regulations made under section 17.

## SCHEDULE 1

## PROCEEDINGS UNDER SECTION 14

Section 14

**Power to administer oaths.**

1. The court may take evidence on oath.

**Proceedings.**

2. Rules of court under section 22 may, in particular, make provision in respect of the persons entitled to appear or take part in the proceedings and for excluding the public from the proceedings.

**Privilege of witnesses.**

- 3.(1) A person cannot be compelled to give any evidence which he could not be compelled to give—

- (a) in criminal proceedings in Gibraltar; or
- (b) subject to sub-paragraph (2), in criminal proceedings in the State from which the request for the evidence has come.

- (2) Sub-paragraph (1)(b) does not apply unless the claim of the person questioned to be exempt from giving the evidence is conceded by the court or authority which made the request.

- (3) Where the person's claim is not conceded, he may be required to give the evidence to which the claim relates (subject to the other provisions of this paragraph); but the evidence may not be forwarded to the court or authority which requested it if a court in the State in question, on the matter being referred to it, upholds the claim.

- (4) A person cannot be compelled to give any evidence if his doing so would be prejudicial to the security of Gibraltar. A certificate signed by or on behalf of the Governor to the effect that it would be so prejudicial for that person to do so is conclusive evidence of that fact.

- (5) A person cannot be compelled to give any evidence in his capacity as an officer or servant of the Crown.

- (6) Sub-paragraphs (4) and (5) are without prejudice to the generality of sub-paragraph (1).

**Forwarding evidence.**

4.(1) The evidence received by the court is to be given to the Central Authority for forwarding to the court or authority that made the request.

(2) So far as may be necessary in order to comply with the request—

- (a) where the evidence consists of a document, the original or a copy is to be provided;
- (b) where it consists of any other article, the article itself, or a description, photograph or other representation of it, is to be provided.

(3) The court may delay the forwarding of any property, records or documents requested, if it requires the said property, records or documents in connection with pending criminal proceedings in Gibraltar.

(4) Any property, as well as original records or documents, shall be handed over in execution of a request on condition that it shall be returned as soon as reasonably possible unless the court waives the return thereof.

5. On the express request of the requesting State the Central Authority shall petition the court to state the date and place of execution of the request. Officials and interested persons may be present at such execution if the court deems it appropriate.

**Supplementary.**

6. The Bankers' Books Evidence Act 1879 applies to the proceedings as it applies to other proceedings before the court.

7. No order for costs may be made.

## SCHEDULE 2

## Section 25 (2)

The levies, duties, taxes and other measures referred to in section 25(2) are the following ones :

- (a) refunds, interventions and other measures forming part of the system of total or partial financing of the European Agricultural Guidance and Guarantee Fund (EAGGF), including sums to be collected in connection with these actions;
- (b) levies and other duties provided for under the common organisation of the market for the sugar sector;
- (c) import duties;
- (d) export duties;
- (e) value added tax;
- (f) excise duties on -
  - manufactured tobacco;
  - alcohol and alcoholic beverages;
  - mineral oils;
- (g) taxes on income and capital as provided by regulations made under Part III of the Act;
- (h) taxes on insurance premiums as provided by regulations made under Part III of the Act;
- (i) interest, administrative penalties and fines, and costs incidental to the claims referred to in paragraphs (a) to (h).